



Memorandum

To: Mayor and City Council **From:** Councilmember Pete Constant
Subject: San José Public Library Internet Access and Computer Use Policy **Date:** April 10, 2009

Approved: 

Supplemental Information

Background

The City of San José has an award-winning library system that serves the needs of San José residents as well those of our neighboring communities. San José public libraries provide integral early and elementary educational resources through children's story time, Artscard Program, Events for Kids, KidsPlace Gateway, Reading to Children, Summer Reading Celebration and homework centers. The City of San José partnered with residents by passing a multi-million dollar sales tax measure that provided an unprecedented investment in San José's library system in 2000.

Parents expect San José public libraries to be child-safe community resources for learning and discovery. However, the libraries do not protect children from viewing harmful material on the internet, or from being exposed to such material by others who are publicly viewing it. It is unlikely that this is the kind of "education" parents expect their children to get at San José Libraries.

In 2006, an ABC 7 I-Team investigative report exposed San José's failure to protect children from pornography and those who would openly view pornographic material in their presence. The investigation documented that there have been a number of individuals arrested for viewing child pornography in libraries, and actually videotaped individuals performing lewd acts such as masturbating in public while viewing pornographic material (<http://abclocal.go.com/kgo/story?section=news/iteam&id=5831970>). According to police reports these were not isolated incidents, yet nothing has been done to make libraries safe for kids to be kids. It is time that we take action. San José's children should be free to discover the world in libraries without having to sacrifice their innocence.

This is not a new concern, nor one that is unique to San José. In fact, the Children's Internet Protection Act (CIPA) is a federal law enacted by Congress in December of 2000 to address concerns about access to offensive content over the internet on school and library computers. It imposes requirements

on any school or library that receives Federal funding for Internet access or internal connections from the “E-Rate” program – a program that makes certain technology more affordable for eligible schools and libraries. The City of San José cannot accept federal funds under CIPA and currently does not comply with the federal guidelines for receipt of such funds. In early 2001, the Federal Communications Commission (FCC) issued rules implementing CIPA. These rules require:

Schools and libraries subject to CIPA may not receive the discounts offered by the E-Rate program unless they certify that they have an Internet safety policy and technology protection measures in place. An Internet safety policy must include technology protection measures to block or filter Internet access to pictures that are: (a) obscene, (b) child pornography, or (c) harmful to minors, for computers that are accessed by minors.

In order to comply with CIPA, many jurisdictions have revised their internet use policies and use internet filtering technology. Phoenix, Houston, Baltimore County, Minneapolis, Denver, Sacramento, San Diego, Santa Cruz, Fresno, Shasta County and Santa Clara County have revised their internet use policies with a range of restrictions. In fact, over 50% of libraries nationwide are CIPA compliant. Below are two examples of policies that provide more protection to children than San José.

The Phoenix Library system provides the highest level of protection for children. Their system uses Websense filtering software, which is the same software that the City of San José uses to filter the computers used by city employees. The following excerpt is taken from the Phoenix policy:

The intent of the additional filtering is to block websites that are not appropriate for children. If a patron wishes to access a site that is blocked by filtering software, that patron may request Library staff to unblock the site. Requests for unblocking and blocking Internet websites can be made by submitting a request online (<http://www.phoenixpubliclibrary.org/libcomp.jsp?lwbid=6996>).

In contrast, the Santa Clara County Library policy provides a much lower level of protection, but is still CIPA compliant. The Santa Clara County Library System utilizes filters in children’s areas and offers it as an option for adults as well:

Children's computers have a commercially produced filter which attempts to block sites that might be considered objectionable. The filter is available as an option on computers in the adult rooms (<http://www.santaclaracountylib.org/services/internetservices.html>).

In order to bring the City of San José into compliance with CIPA and offer a higher level of protection for children, I introduced a proposal at the Rules and Open Government Committee that would direct staff to revise the City’s Library Internet Access and Computer Use Policy and utilize internet filtering technology in San José public libraries. In response to the direction given by the Rules and Open Government Committee, Library staff tested four different examples of filtering technology. This test was described in a report dated May 7, 2008, that was heard by the Rules and Open Government Committee on May 14, 2008. Staff’s review raised many concerns regarding the effectiveness of filtering technology.

In an effort to further understand the filtering technology available, I traveled to Phoenix, Arizona to review their system. I performed the San José Library staff test on a Phoenix library computer and it performed flawlessly. While there I further learned that the Phoenix City Council made a policy decision to draft an internet and computer use policy that prohibited the viewing of pornographic websites in Phoenix Libraries. The current system is a result of that policy direction. The Phoenix Library staff put together a process to fulfill the Council's policy direction that was inclusive and effective. In fact, their system has even received praise from the Arizona ACLU who stated, "We applaud the City of Phoenix for striving to adopt a policy which protects our First Amendment rights!" (*ACLU-AZ Spring 2005 newsletter*).

When I asked the experienced Phoenix Library IT staff why the results were so strikingly different, they explained that effective, accurate filter relies on the software being set-up properly. Upon my return to San José, I compared the software settings used by our own Library staff to those used by the Phoenix Libraries, and indeed there was a significant difference in how the software parameters were configured.

Due to the discrepancy between the San José Library Department test and my observations in Phoenix, I felt that it was important to be able to publicly show the effectiveness of this technology when appropriately configured. On May 30, 2008, I hosted an internet filtering technology presentation at City Hall. This meeting was publicly noticed through the City Clerk's office in order to allow all council offices and members of the public to attend. The meeting was posted on the City Calendar and at City Hall, per our public outreach policy. I also requested that it be posted to the online Master Calendar. I sent an email invitation to everyone who had contacted me regarding the issue by email. I personally called the Director of the San José office of the ACLU and invited her to participate in the meeting. My office called the Library department to invite the Director and asked her to share the information with the Friends of the Library and Library Commission. There were a number of council offices represented at the presentation, as well as representatives from the ACLU, Library Commission, Planned Parenthood and members of the press.

Analysis

The May 7th staff report identifies concerns that were echoed by representatives from special interest groups as well as members of the public. Specifically, concerns of violating users' First Amendment rights, under-blocking, over-blocking and the cost implications. I will address each of these issues below.

First Amendment

The City Attorney provided the City Council with a memo dated May 13, 2008 reviewing the pertinent case-law. The memo clarifies that the direction recommended in this memo would not result in a First Amendment challenge. It explains a 2005 Supreme Court decision that upheld CIPA where the American Library Association filed a facial First Amendment challenge to the Child Internet Protection Act. In *U.S. v. American Library Association, Inc. (2003) 539 U.S. 194* the Supreme Court determined that the use of internet filters in public libraries does not constitute a violation of the First Amendment. This proposal is consistent with the Supreme Court's decision.

Under-blocking

The May 7th staff report claims that the filters allowed pornographic websites to be viewed or resulted in under-blocking. However, when I ran the library staff's same test on computers in Phoenix, and at the May 30th public presentation my results were quite different. All of the sites that the staff report claimed were not blocked were, in fact, blocked. Furthermore, the pornographic sites recommended by members of the public were also accurately blocked. There were no incidents of under-blocking.

Over-blocking

Library staff, as well as others who are skeptical of the effectiveness of internet filtering technology, claim that legitimate health and educational websites are regularly over-blocked. These claims of over-blocking gave me the greatest concern. Legitimate research must be accessible in San José Public Libraries. I conducted the same test as Library staff to determine if there were any incidents of over-blocking; there were none. I assigned a member of my staff the task of trying to beat the filters. She experienced no over or under-blocking during eight hours of testing. During the May 30th public presentation there was, however, one incident of over-blocking. One website, www.clothingwhore.com which was suggested by the audience, was inappropriately blocked. It is a legitimate clothing retail website.

It should be noted that a subsequent attempt to view the website on the same computer was allowed without restriction. This clearly illustrates the ability of current filtering technology to adapt for websites that are mistakenly identified as inappropriate.

Conclusion

The San José Library system is not doing enough to ensure that libraries provide a child-friendly learning environment. There have been multiple complaints of lewd acts and public indecency. These situations are not discouraged or even addressed by the City's current computer use policy. San José can, and must, do more to protect children in libraries.

Filtering technology can be easily configured to allow for legitimate research while also protecting children from the dangers of second-hand porn. The financial cost to the City is minimal compared to the immense public safety and social benefits. Furthermore, these recommendations can be phased in to minimize the budget impacts.

By implementing these proposals we will achieve a balance between providing the public to the resources of the internet for legitimate research, while protecting minors from the dangers of viewing pornography and other harmful material that is readily available on the internet.

This is a balanced approach that provides a safe and inviting learning environment by establishing appropriate standards of conduct, coupled with technology that protects children while allowing academic freedom and self-regulation.